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Before the
FEDERAL COMMUNICATIONS COMMISSION SEP 25 1997
Washington, DC 20554

In the Matter of)
Federal-State Joint Board on)
Universal Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-
45
DA 97-1957

To: The Commission

COMMENTS

KM Broadcasting, Inc. ("KMB"), hereby submits its comments in the above-referenced proceeding in response to the Public Notice, DA 97-1957, released by the Commission on September 10, 1997.¹ KMB is the licensee of LPTV station W14BN in Richmond, Virginia. As part of its public service program, KMB intends to educate schools and other eligible entities in the Richmond area concerning the opportunity for funding for Internet services in the form of universal service support available in this proceeding. As such, KMB urges the Commission to adopt measures which allow the neediest eligible entities to apply for and receive universal service support, and not to continue the present regulatory scheme of first-come, first-served, which will most certainly reward eligible entities with the most resources. America's educational system is in dire need of support, particularly those schools educating the poorest students.

The gap between poor and rich widens every day. Allowing schools in affluent areas to have the first crack at the

¹ The Public Notice established the date for the filing of comments as September 25, 1997. Consequently, these Comments are timely filed.

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universal service funds, while leaving the schools with poorer students to fight over the remains of the capped pool of funds at the end of the calendar year, would simply reinforce the inequitable system already in place. The educational arena, where the underlying philosophy should be to benefit the greatest number of people, is no place to embrace the free market philosophy of first-come, first-served, which embraces the Darwinian approach of the survival of the fittest (and this case, the most affluent). The last shall be first only if there are sufficient safeguards to ensure that adequate funds are available to provide the students most in need of the superior educational tools afforded by computers and the Internet with those resources. In support whereof the following is submitted.

I. Background

On May 8, 1997, the Federal Communications Commission ("Commission") released a *Report and Order* on Universal Service.² In the *Order*, the Commission determined that funds for eligible schools, libraries, and rural health care providers to purchase commercially available telecommunications services, Internet access, and internal connections will be distributed on a first-come first-served basis beginning January 1, 1998. The Commission also established a \$2.25 billion annual cap on universal service support for schools and libraries and a \$400 million annual cap for rural health care providers, with a

² Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997).

roll-over into following years of funding authority, if necessary, for funds not disbursed in any given year. Eligible schools and libraries will be required to participate in a competitive bidding process to select their service providers and will be permitted to submit funding requests once they have made agreements for specific eligible services. Eligible schools and libraries will enjoy discounts ranging from 20% to 90%, with the higher discounts being provided to the most disadvantaged schools and libraries and those in high cost areas. The Administrator will commit funds based on those agreements on a first-come first-served basis until only \$250 million in funds remains available. Thereafter, a system of priorities will govern the distribution of the remaining \$250 million to provide an opportunity for only the most economically disadvantaged schools and libraries to receive support. In light of the need to implement the necessary administrative processes, funding for the period beginning January 1, 1998 and ending June 30, 1998 will be limited to \$1 billion for schools and libraries. Similarly, disbursement to rural health care providers will be limited to \$100 million in the first quarter of 1998.

The Commission issued the aforementioned Public Notice, DA 97-1957, on September 10, 1997. In it the Commission requested comment in several issues.

**I. Fairness Dictates That Window Periods
Should Be Established**

One issue upon which the Commission seeks comment is whether a "window" period should be established in which all

beneficiaries filing within that period would be given equal priority. The Commission also seeks comment on the length of the period in which any such window should remain open and as to whether there should be a "rolling" or ongoing series of windows, e.g., a series of two week windows during which all beneficiaries filing within that two-week period would be given equal priority.

KMB urges that the Commission eliminate the first-come, first-served approach and adopt a window period for the required filing by eligible entities. All applications filed during such window would then be treated on an equal basis. If the Commission is to adopt any priority system, it should be based on the type of need showing which will form the basis of discounts ranging from 20% to 90% for eligible schools and libraries, with the higher discounts being provided to the most disadvantaged schools and libraries. This same principle should be applied to create a priority for needier entities, should there be a need to establish such a priority system.³

Rather than adopt a rolling window, which will still favor those with the greatest resources, the Commission should establish one window per funding period. To establish eligibility for funding in beginning in January, 1998, the window should extend from the date of adoption of the new procedural rules through December 31, 1997. To establish eligibility for funding beginning in January, 1999, and subsequent years, the

³ This need will most likely arise due to the fact that a cap has been established for the funds available in the program each year.

window should at the very least extend through the first nine months of the year, i.e., from January 1 through September 30.⁴ This would allow eligible entities a sufficient amount of time to prepare and file funding requests with the Commission, so that requests could be processed for the distribution of funds in the early part of the following year.^{5 6}

II. The Rules With Respect to Funding in 1998 Should Be Clarified

Another issue upon which the Commission seeks comment is whether to clarify that the rules of priority for distributing funds to schools and libraries set forth in section 54.507 of the Commission's rules, 47 C.F.R. § 54.507, apply to the \$1 billion available between January 1, 1998 through June 30, 1998. That

⁴ A second window could be established for the last three months of the year. The parties filing in this second window would be eligible for funding once the eligible parties from the first window had received funding.

⁵ One gets the sense from the Commission decisions and Public Notices issued to date that there is a tremendous need to issue the funds at the earliest possible date. Just because funding is available on January 1, 1998, does not mean that it must be distributed starting on that date. There need not be any rush to write a check distributing funds dated January 1, 1998. There should be safeguards to ensure the funds are spent wisely, not quickly.

⁶ The Commission must admit that it could not have made the application process any more convoluted or difficult. Schools and libraries are going to have to rely on a battery of consultants and lawyers to prepare studies and system designs for their respective facilities, then prepare subsequent filings with the Commission seeking bids on the proposals, monitoring results and otherwise coordinating funding requirements with federal authorities. The over-regulation involved will seriously inflate the expense of any project designed to bring the Internet to schools, further jeopardizing the ability of entities with limited resources to meet the needs of its students.

is, if expenditures between January 1, 1998 and June 30, 1998 reach the level where only \$250 million remains before the \$1 billion cap is reached, the remaining funds will be distributed in accordance with the rules of priority.

KMB urges that, at the very least, if expenditures between January 1, 1998 and June 30, 1998 reach the level where only \$250 million remains before the \$1 billion cap is reached, then the remaining funds should be distributed in accordance with the rules of priority based on need, as discussed above. This approach must be adopted in order to ensure that the eligible entities with the least resources are protected.

Conclusion

The Washington Post reports on the front page of today's issue that some Washington DC public schools, many of which have already opened late due to failure of the physical plant to meet safety standards, do not have on hand a sufficient number of the textbooks for distribution to all of the students. Meanwhile, across the Potomac, just a few miles from the DC border, for example, students in the affluent suburbs of Fairfax County sit at Fairfax County public school system computers, pressing keys which bring educational materials on screen for all to see and learn. The issue of the abject, nearly criminal, failure of the District of Columbia to educate its students, while surrounding areas excel at educating theirs, is a topic for another forum on another day. However, the District's failure to have a sufficient supply of the most basic educational tools on hand for

its students illustrates most forcefully the need for the Commission to guarantee not that funds be available for the swiftest, which the eligible entities located in affluent areas most surely will be, but to the neediest, i.e., the students of the District of Columbia and others in similarly distressing situations. Retaining the first-come, first-served approach at this critical juncture in the history of America's educational system would be a fatal blunder from which America's neediest students might never recover. While the income gap between low and high income groups grows ever wider, it is the public interest responsibility of the Federal Communications Commission to ensure that the education gap between those two groups fails to grow and indeed narrows, through the prudent dispersal of universal service funds.

Respectfully Submitted,

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